

Appl. No. 10/550287
Reply to Office Action dated 7/20/09

Remarks

Favorable reconsideration of this application is respectfully requested in view of the above amendments and following remarks. Claims 10 and 22 are amended to further clarify the transparent/semi-transparent feature of the container, and are supported throughout Applicant's disclosure. Claims 36 and 37 are added and are supported for example at page 3, lines 10-12 and page 4, lines 19-21 of Applicant's original disclosure. No new matter has been added. Claims 10, 11, 13, 16, 17, 19-22, and 29-37 are pending.

Claims 10, 13, 16, 19-22, 30-31, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001141989 in view of Stewart et al. (US 4,589,547), Mao et al. (US 6,605,201), Feldman et al. (US 6,461,496), and Karinka et al. (US 7,501,053). While the statement of the rejection says that the claims are finally rejected, Applicant understands that prosecution has been reopened in view of the RCE filed July 1, 2009 and that the finality of the rejection has been withdrawn. Nonetheless, Applicant respectfully traverses the rejection.

The references JP 2001141989, Stewart et al., Mao et al., and Feldman et al. all fail to disclose or suggest at least the specific ruthenium complex [Ru(NH₃)₆] in the sensor-container combination as claimed. Karinka et al. fails to remedy the deficiencies of the references, as it neither discloses nor suggests the particular ruthenium complex [Ru(NH₃)₆].

Rather, Karinka et al. simply mentions ammonia as an example ligand for ligands a, b, c, and d of the metal complex, but also requires at least one ligand to be 1,10-phenanthroline-5,6-dione (see Column 6, lines 21-27 and the general formula at Column 6, lines 30-40). Karinka et al. therefore does not satisfy a ruthenium complex whose ligands are all ammonias, as recited by claims 10 and 22, since the reference requires that at least 1,10-phenanthroline-5,6-dione be one of the ligands. Furthermore, as Karinka et al. describes various other ligands suitable for a, b, c, and d, there is no reasonable basis to assume that Karinka et al. would modify its complex to be a ruthenium complex whose ligands are all ammonias. Karinka et al. fails to provide what is missing from the references cited.

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Furthermore, Applicant respectfully submits that the references of record fail to suggest that [Ru(NH₃)₆] has lightfastness that makes it useful as a mediator for use in the sensor-container combination claimed. This permits the use of the transparent/semi-transparent nature of the container, since the particular ruthenium complex [Ru(NH₃)₆] can provide good shielding and protection for the sensors stored in the container (see e.g. Tables 2 and 3 on page 17 of Applicant's disclosure and also page 18, lines 16-19). Further, the containers recited in claims 10 and 22 also can provide an advantageous sensor-container combination that allows for easier visual checking of remaining sensors from the outside. The prior art, however, fails to disclose the container structure and mediator combination required by claims 10 and 22, and without the benefit of impermissible hindsight using Applicant's disclosure, the prior art also fails to suggest the combination of the claimed invention or any advantages that may be enjoyed thereby.

For at least the foregoing, Applicant respectfully submits that claims 10 and 22 do not follow from the art cited and that the claims are patentable, along with their respective dependents.

Moreover, Applicant respectfully submits that claimed invention has enjoyed commercial success, and that additional objective evidence of commercial success may be submitted to further support the non-obviousness of the claims.

Lastly, regarding the Examiner's comments at item 6 of the Office Action, Applicant respectfully disagrees that there is nothing inventive of the sensor-container combination claimed, based on the fact that the particular features were not explicitly claimed earlier in prosecution. It is respectfully submitted that Applicant is entitled to a reasonable scope for their claims and that limitation during prosecution does not necessarily detract from the patentability of the claimed features.

Applicant respectfully requests favorable reconsideration and withdrawal of the rejection.

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Claims 11 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 10 above, and further in view of either one of Yamamoto et al. (US 4,889,229) and Swain (US 3,139,976). As claim 29 depends upon claim 22, Applicant assumes that the rejection is meant as the art applied to claims 10 and 22 above, rather than claim 10 alone. Nonetheless, Applicant respectfully traverses the rejection.

Claims 11 and 29 respectively depend upon claims 10 and 22. Claims 10 and 22 have been distinguished over the art of record for at least the reasons above. Yamamoto et al. and Swain do not remedy the deficiencies of the art applied above. Thus, claims 11 and 29 are patentable for at least the same reasons as claims 10 and 22. Applicant does not necessarily concede the correctness of the rejection.

Favorable reconsideration and withdrawal of the rejection are respectfully requested.

Claims 17 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 10 and 22 above, and further in view of either one of Blackburn et al. (US 6,761,816) and Cozzette et al. (US 5,200,051). Applicant respectfully traverses the rejection.

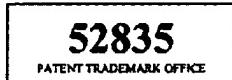
Claims 17 and 32 respectively depend upon claims 10 and 22. Claims 10 and 22 have been distinguished over the art of record for at least the reasons above. Blackburn et al. and Cozzette et al. do not remedy the deficiencies of the art applied above. Thus, claims 17 and 32 are patentable for at least the same reasons as claims 10 and 22. Applicant does not necessarily concede the correctness of the rejection.

Favorable reconsideration and withdrawal of the rejection are respectfully requested.

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In view of the above amendments and remarks, Applicant respectfully requests favorable reconsideration of this application in the form of a Notice of Allowance. If any questions arise regarding this communication, the Examiner is invited to contact Applicant's representative listed below.

Respectfully submitted,



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By: A handwritten signature in black ink, appearing to read "Douglas P. Mueller".
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DPM/baw